

APPROVED

CHAPTER

APR 14 '04

641

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOUR

S.P. 744 - L.D. 1900

**An Act To Implement the Recommendations of the Community
Preservation Advisory Committee Regarding the State
Planning Office's Review of Growth Management Programs**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, several municipalities may lose financial assistance and regional planning grants if the law is not clarified to allow those grants to be carried forward twice; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §1589, first ¶, as amended by PL 1995, c. 464, §5, is further amended to read:

At the end of each fiscal year, unencumbered appropriation and allocation balances lapse into the appropriate fund and are not available unless authorized by law. Encumbered balances may not be carried forward more than once at the end of a fiscal year, except that all encumbered balances and accounts for financial assistance and regional planning grants in accordance with Title 30-A, chapter 187 may be carried forward for 2 years beyond the year in which those balances are encumbered.

Sec. 2. 30-A MRSA §4314, sub-§1, as amended by PL 2001, c. 406, §3, is further amended to read:

1. **Comprehensive plan.** A municipal comprehensive plan adopted or amended by a municipality under former Title 30, chapter 239, subchapter V 5 or VI 6 remains in effect until amended or repealed in accordance with the procedures, goals and guidelines established in this subchapter.

Sec. 3. 30-A MRSA §4314, sub-§2, as amended by PL 2001, c. 406, §3, is repealed and the following enacted in its place:

2. **Shoreland and floodplain zoning ordinances.** Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that is not consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter is no longer in effect 24 months after adoption of the plan unless the ordinance:

A. Does not regulate land use beyond the area required by Title 38, chapter 3, subchapter 1, article 2-B; or

B. Is adopted pursuant to and complies with the provisions of Title 38, section 440 and complies with the requirements of the Federal Flood Insurance Program.

Sec. 4. 30-A MRSA §4314, sub-§3, as amended by PL 2001, c. 578, §10, is further amended to read:

3. **Rate of growth, zoning and impact fee ordinances.** After January 1, 2003, any portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted under in accordance with the procedures, goals and guidelines established in this subchapter. The portion of a rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan is no longer in effect unless:

C. The ordinance or portion of the ordinance is exempted under subsection 2;

D. The municipality or multimunicipal region is under contract with the office to prepare a comprehensive plan or implementation program, in which case the ordinance or portion of the ordinance remains valid for up to 4 years after receipt of the first installment of its first planning assistance grant or for up to 2 years after receipt of the first installment of its first implementation assistance grant, whichever is earlier;

E. The ordinance or portion of the ordinance conflicts with a newly adopted comprehensive plan or plan amendment adopted under in accordance with the procedures, goals and guidelines established in this subchapter, in which case the ordinance or portion of the ordinance remains in effect for a period of up to 24 months immediately following adoption of the comprehensive plan or plan amendment; or

F. The municipality or multimunicipal region applied for and was denied financial assistance for its first planning assistance or implementation assistance grant under this subchapter due to lack of state funds on or before January 1, 2003. If the office subsequently offers the municipality or multimunicipal region its first planning assistance or implementation assistance grant, the municipality or multimunicipal region has up to one year to contract with the office to prepare a comprehensive plan or implementation program, in which case the municipality's or multimunicipal region's ordinances will be subject to paragraph D.

Sec. 5. 30-A MRSA §4314, sub-§4, as enacted by PL 1991, c. 722, §6 and affected by §11, is repealed.

Sec. 6. 30-A MRSA §4323, sub-§2, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

2. **Growth management program.** Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with the procedures, goals and guidelines established in this subchapter; and

Sec. 7. 30-A MRSA §4324, sub-§§1 and 2, as amended by PL 2001, c. 578, §13, are further amended to read:

1. **Growth management program.** Each municipality or multimunicipal region may prepare a growth management program in accordance with this section or may amend its existing comprehensive plan and existing land use ordinances to comply with the procedures, goals and guidelines established in this subchapter.

2. **Planning committee.** If a municipality or multimunicipal region chooses to prepare a growth management program, the municipal officers of a municipality or combination of municipalities shall designate and establish a planning committee, which may include one or more municipal officials.

A. The municipal officers may designate any existing planning board or district established under subchapter IV

4, or a former similar provision, as the planning committee. Planning boards established under former Title 30, section 4952, subsection 1 continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

B. The planning committee may develop and maintain a comprehensive plan and may develop any portion of an implementation program to which it is assigned in an adopted comprehensive plan or otherwise directed by the municipal officers or municipal legislative body or bodies. In performing these duties, the planning committee shall:

(1) Hold public hearings and use other methods to solicit and strongly encourage citizen input; and

(2) Prepare the comprehensive plan or any portion of the implementation program to which it is assigned in an adopted comprehensive plan and make recommendations to the municipal legislative body regarding the adoption and implementation of the program or amended program.

Sec. 8. 30-A MRSA §4324, sub-§8, as amended by PL 2001, c. 578, §13, is further amended to read:

8. **Public hearing required.** The planning committee shall hold at least one public hearing on its proposed comprehensive plan.

A. Notice of any a public hearing must be posted in each municipality at least 30 days before the hearing, except that, if a follow-up hearing is held pursuant to comments made at a public hearing, the follow-up hearing may be conducted if public notice is given pursuant to Title 1, section 406.

B. A copy of the proposed comprehensive plan must be made available for public inspection at each municipal office or other convenient location with regular public hours at least 30 days before the hearing. If modification of the plan is proposed pursuant to comments made at a public hearing, and if a follow-up public hearing is to be held, the proposed changes must be made available for public inspection at each municipal office or other convenient location with regular public hours before any follow-up hearing.

Sec. 9. 30-A MRSA §4345, first ¶, as amended by PL 2001, c. 578, §18, is further amended to read:

Under the provisions of this article, a municipality or multimunicipal region may request financial or technical assistance from the office for the purpose of planning and implementing a growth management program. A municipality or multimunicipal region that requests and receives a financial assistance grant shall develop and implement its growth management program in cooperation with the office and in a manner consistent with the provisions of this article procedures, goals and guidelines established in this subchapter.

Sec. 10. 30-A MRSA §4346, 2nd ¶, as amended by PL 2001, c. 578, §19, is further amended to read:

The office may enter into financial assistance grants only to the extent that funds are available. In making grants, the office shall consider the need for planning in a municipality or multimunicipal region, the proximity of the municipality or multimunicipal region to other areas that are conducting or have completed the planning process and the economic and geographic role of the municipality or multimunicipal region within a regional context. The office may consider other criteria in making grants, as long as the criteria support the goal of encouraging and facilitating the adoption and implementation of local and multimunicipal growth management programs consistent with the provisions of this article procedures, goals and guidelines established in this subchapter. In order to maximize the availability of the technical and financial assistance program to all municipalities, multimunicipal regions and regional councils, financial assistance programs administered competitively under this article are exempt from rules adopted by the Department of Administrative and Financial Services pursuant to Title 5, section 1825-C for use in the purchase of services and the awarding of grants and contracts. The office shall publish a program statement describing its grant program and advertising its availability to eligible applicants.

Sec. 11. 30-A MRSA §4346, sub-§2-B, ¶H, as amended by PL 2001, c. 578, §19, is further amended to read:

H. Any other purpose agreed to by the office and the municipality or multimunicipal region that is directly related to the preparation of a comprehensive plan or the implementation of a comprehensive plan adopted under in accordance with the procedures, goals and guidelines established in this subchapter.

Sec. 12. 30-A MRSA §4346, sub-§2-D is enacted to read:

2-D. Encumbered balances at year-end. Notwithstanding Title 5, section 1589, at the end of each fiscal year, all

encumbered balances accounts for financial assistance and regional planning grants may be carried forward for 2 years beyond the year in which those balances are encumbered.

Sec. 13. 30-A MRSA §4347-A, sub-§1, as amended by PL 2001, c. 578, §20, is further amended to read:

1. **Comprehensive plans.** A municipality or multimunicipal region that chooses to prepare a growth management program and receives a planning grant under this article shall submit its comprehensive plan to the office for review. A municipality or multimunicipal region that chooses to prepare a growth management program without receiving a planning grant under this article may submit its comprehensive plan to the office for review. The office shall review plans for consistency with the procedures, goals and guidelines established in this subchapter. Any A contract for a planning assistance grant must include specific timetables governing the review of the comprehensive plan by the office. Any A comprehensive plan submitted for review more than 12 months following a contract end date may be required to update contain data, projections and other time-sensitive portions of the plan or program ~~to~~ that are in compliance with the office's most current review standards.

Sec. 14. 30-A MRSA §4347-A, sub-§2, ¶C is enacted to read:

C. Upon a request for review under this section, the office may review rate of growth, impact fee and zoning ordinances to determine whether the ordinances are consistent with a comprehensive plan that has been found consistent under this section without requiring submission of all elements of a growth management program. An affirmative finding of consistency by the office is required for a municipality or multimunicipal region to assert jurisdiction as provided in section 4349-A.

Sec. 15. 30-A MRSA §4347-A, sub-§3, ¶¶C and D, as amended by PL 2001, c. 578, §20, are further amended to read:

C. Within 60 days after receiving the comprehensive plan or 90 days after receiving the growth management program, send all written comments on the comprehensive plan or growth management program to the municipality or multimunicipal region and any applicable regional council. If warranted, the office shall issue findings specifically describing how the submitted plan or growth management program is not consistent with the procedures, goals and guidelines established in this subchapter and the recommended measures for remedying the deficiencies.

(1) In its findings, the office shall clearly indicate its position on any point on which there are significant conflicts among the written comments submitted to the office.

(2) If the office finds that the comprehensive plan or growth management program was adopted ~~under~~ in accordance with the procedures, goals and guidelines established in this subchapter, the office shall issue a finding of consistency for the comprehensive plan or a certificate of consistency for the growth management program.

(3) Notwithstanding paragraph D, if a municipality or multimunicipal region requests a certificate of consistency for its growth management program, any unmodified component of that program that has previously been reviewed by the office and has received a finding of consistency will retain that finding during program certification review by the office as long as the finding of consistency is current as defined in rules adopted by the office;

D. Provide ample opportunity for the municipality or multimunicipal region submitting a comprehensive plan or growth management program to respond to and correct any identified deficiencies in the plan or program. A finding of inconsistency for a comprehensive plan or growth management program may be addressed within 24 months of the date of the finding without ~~jeopardizing partial findings of consistency attained during that review~~ addressing any new review standards that are created during that time interval. After 24 months, the plan or program must be resubmitted in its entirety for state review under the office's most current review standards; and

Sec. 16. 30-A MRSA §4349-A, sub-§1, ¶A, as amended by PL 2001, c. 406, §12, is further amended to read:

A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347-A;

Sec. 17. 30-A MRSA §4349-A, sub-§3, as amended by PL 2001, c. 406, §15, is further amended to read:

3. Preference for other state grants and investments. When awarding grants or making a discretionary investment under any of

the programs under paragraphs A and B or undertaking its own capital investment programs other than for projects identified in section 4301, subsection 5-B, a state agency shall respect the primary purpose of its grant or investment program and, to the extent feasible, give preference first to a municipality that receives a certificate of consistency under section 4347-A and 2nd to a municipality that has adopted a comprehensive plan consistent with the procedures, goals and guidelines of this subchapter over a municipality that does not obtain the certificate or finding of consistency within 4 years after receipt of the first installment of a financial assistance grant or rejection of an offer of financial assistance. This subsection applies to:

A. Programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353; and

B. Programs intended to:

- (1) Accommodate or encourage additional growth and development;
- (2) Improve, expand or construct public facilities; or
- (3) Acquire land for conservation or management of specific economic and natural resource concerns.

This subsection does not apply to state grants or other assistance for sewage treatment facilities, public health programs or education.

The office shall work with state agencies to prepare mechanisms for establishing preferences in specific investment and grant programs as described in paragraphs A and B.

Sec. 18. 38 MRSA §440, 2nd ¶, as reallocated by PL 1985, c. 481, Pt. A, §28, is amended to read:

~~Zoning--ordinances~~ A zoning ordinance adopted or extended pursuant to this section shall must be pursuant to and consistent with a comprehensive plan unless the ordinance complies with the requirements of the Federal Flood Insurance Program or other provisions of this section.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.